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APR 11 2005

In re Application of
Benjamin L. Furman et al.
Application No. 09/726,769
Filed: November 29, 2000
Attorney Docket No. SWRI-2749A

OFFICE OF PETITIONS
ON PETITION

This is a decision on the petition filed March 10, 2005, under 37 CFR 1.137(a)¹, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned July 1, 2004 for failure to timely respond to the non-Final Office Action mailed March 30, 2004. No requests for extensions were filed. This decision precedes the mailing of a Notice of Abandonment.

Petitioner argues that the Notice mailed March 30, 2004 was not received and points out that the address used for mailing the office action was incorrect. Petitioner further argues that a request for customer number data change was filed March 27, 2003 and acknowledged March 28, 2003 but that the office action was mailed to the old address.

A review of the file reveals that the petitioner is correct and it is noted that an error on the part of the USPTO caused the office action mailed to not be received by the petitioner. However, the reason the error occurred is because petitioner never associated customer number 23770 with the instant application until May 5, 2004 when

¹ A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(l);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

the Applicant Data Sheet (ADS) was filed. Prior to that, when the requested change was filed, there wasn't a customer number associated with this application. Once the ADS was filed however, it was incumbent upon the USPTO to make the association and since that wasn't done prior to the mailing of the office action on March 30, 2004, the mail was returned as undeliverable. Thus, petitioner's delay in responding to the non-Final Office Action was unavoidable under the standard set out at 37 CFR 1.137(a).

The address has been corrected and the customer number added to this application.

This matter is being referred to Technology Center 1773 for further examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
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Office of Petitions